



May 3, 2001

Ms. Michelle Simpkins
Winstead, Sechrest & Minick
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2001-1812

Dear Ms. Simpkins:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146770.

The Brushy Creek Municipal Utility District (the “district”), which you represent, received two requests for information from the same requestor. In his first request, the requestor seeks all documents relating to a discussion by the district’s board of directors in executive session. In his second request, the requestor seeks information relating to the district’s discussions with the City of Round Rock concerning the operation, maintenance, and possible sale of the West Round Rock Water Distribution System. You claim that the requested information is excepted from disclosure under sections 552.101, 552.105, 552.107, and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You contend that the district has two pieces of information responsive to the first request—a memorandum from the district to the district’s general counsel and a certified agenda. With respect to the memorandum, you contend that the district previously requested a decision from this office regarding whether it could withhold the same memorandum. In that ruling, Open Records Letter No. 2001-1530 (2001), this office found that the requested memorandum was excepted from disclosure under section 552.107. You may rely on Open Records Letter No. 2001-1530 (2001) to withhold the memorandum responsive to the instant request for information if the memorandum at issue is precisely the same memorandum this office ruled on in Open Records Letter No. 2001-1530 (2001) and if the law, facts, and circumstances on which Open Records Letter No. 2001-1530 (2001) was based have not changed since the issuance of the ruling. *See* Open Records Decision No. 673 at 6 (2001). Otherwise, you must release the memorandum. *See* Gov’t Code §§ 552.301, .302.

Next, you assert that the responsive certified agenda is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 551.104(c) of the Government Code provides that "[t]he certified agenda or tape of a closed meeting is available for public inspection and copying only under a court order issued under Subsection (b)(3)." Such information cannot be released to a member of the public in response to an open records request. *See* Open Records Decision No. 495 (1988). Therefore, the district must withhold the certified agenda of the closed meeting under section 552.101 in conjunction with section 551.104(c) of the Government Code. *See Id.*

You state that the second request encompasses information concerning the valuation of the West Round Rock Water Distribution System (the "system") that is excepted under sections 552.105 and 552.111 of the Government Code. Section 552.105(2) excepts from required public disclosure "information relating to . . . appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property." Section 552.105 protects information, the release of which would impair or tend to impair the governmental body's "planning and negotiating position in regard to particular transactions." Open Records Decision No. 222 (1979). Whether particular information falls under the protection of section 552.105 is a question of fact, and the attorney general will accept a governmental body's good faith determination that release of certain information would damage its future negotiating position unless the records or other information show the contrary as a matter of law. Open Records Decision No. 564 (1990).

You assert that the information responsive to the second request pertains to the district's valuation and appraisal of the system, which the district is considering selling to the City of Round Rock (the "city"). You indicate that the district is waiting to begin negotiations with the city for the sale of the system and that the district believes its negotiating position will be damaged if the requested information is released. Based on your arguments and our review of the information, we agree that the information submitted in response to the second request for information is excepted under section 552.105(2) and may therefore be withheld. Based on this decision, we need not reach your argument under section 552.111 of the Government Code.

In summary, you may withhold the memorandum responsive to the first request based on Open Records Letter No. 2001-1530 (2001) if the memorandum at issue is precisely the same memorandum this office ruled on in Open Records Letter No. 2001-1530 (2001) and if the law, facts, and circumstances on which Open Records Letter No. 2001-1530 (2001) was based have not changed since the issuance of the ruling. Furthermore, you must

withhold the certified agenda responsive to the first request under section 552.101 of the Government Code in conjunction with section 551.104 of the Government Code. Finally, you may withhold the information submitted in response to the second request under section 552.105 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

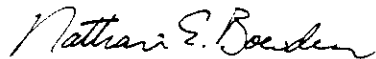
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, reading "Nathan E. Bowden".

Nathan E. Bowden
Assistant Attorney General
Open Records Division

NEB/rr

Ref: ID# 146770

Encl: Submitted documents

cc: Mr. John C. McLemore
8400 Cornerwood Drive
Austin, Texas 78717
(w/o enclosures)